

City of Alexandria, Virginia

24
5-13-03

MEMORANDUM

DATE: MAY 8, 2003

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER *PS*

SUBJECT: RESOLUTION TO AMEND THE CITY OF ALEXANDRIA PENSION PLAN FOR FIRE FIGHTERS AND POLICE OFFICERS TO ELIMINATE THE INCOME OFFSET FROM GAINFUL EMPLOYMENT FOR THOSE ON PARTIAL DISABILITY

ISSUE: Consideration of proposed revision to the Pension Plan for Fire Fighters and Police Officers to eliminate the income offset from gainful employment for those on partial disability.

RECOMMENDATION: That City Council adopt the attached resolution (Attachment 1), which amends the Pension Plan for Fire Fighters and Police Officers to eliminate the income offset from gainful employment for those on partial disability.

DISCUSSION: This resolution fixes an unintentional oversight that occurred last December in regard to the City's two police officers and firefighters disability plans. Historically, these two plans, which provide disability payments to eligible firefighters and police officers in the old defined benefit pension plan and the current defined contribution pension plan, contained a provision under which an individual's disability payment was partially offset or reduced by the income the disabled person was able to earn through gainful employment. Often, persons retired on disability are able to work to supplement their income.

On December 10, 2002, at the recommendation of City staff and the City's police and fire employee organizations, Council passed a resolution which eliminated the income offset for firefighters and police officers in the current disability plan, which is associated with those in the public safety forces covered by the current defined contribution plan. This disability income plan provides benefits to nearly all current firefighters and police officers and many retired and disabled firefighters and police officers.

However, the resolution approved in December by Council did not provide parallel "income offset" treatment to the disabled firefighters and police officers who are covered under the old defined benefit retirement plan. This plan is a closed defined benefit plan which also provides disability income payments. The City closed this plan when the new defined contribution retirement plan and separate new disability plan were established in the late 1970's.

The attached resolution provides for the amendment of the Pension Plan for Fire Fighters and Police Officers (the old plan). This amendment eliminates the disability income offset provision in this plan as of July 1, 2002 so that the plan matches the offset provisions and effective date of the current disability income plan approved by Council last December. There are eleven disabled firefighters and police officers who are receiving benefits under the old closed plan. In the past, only two had their disability payments reduced by income from gainful employment.

ATTACHMENTS:

Attachment 1. Resolution

Attachment 2. Proposed Amendment to the City of Alexandria Pension Plan for Fire Fighters and Police Officers.

STAFF:

Daniel Neckel, Director of Finance

Caterina Tarver, Pension Administrator

RESOLUTION NO. _____

WHEREAS, the City of Alexandria maintains the **City of Alexandria Pension Plan For Firefighters and Police Officers** (the "Plan"); and

WHEREAS, the City of Alexandria desires to incorporate an amendment to the Plan as set forth in the "First Amendment to the City of Alexandria Pension Plan for Firefighters and Police Officers" (the "Plan Amendment") attached hereto; and

WHEREAS, the Plan Amendment is intended to remove the income offset from any disability payment made after July 1, 2002.

NOW, THEREFORE, BE IT RESOLVED THAT the Alexandria City Council does hereby recognize, adopt, and approve the Plan Amendment attached hereto and incorporated fully herein by reference; and

BE IT FURTHER RESOLVED THAT this Resolution shall be effective immediately; provided, however, that the amendment hereby approved shall be effective as stated in the Plan Amendment.

ADOPTED: _____

Kerry J. Donley, Mayor

Attest:

Beverly I. Jett, CMC, City Clerk

**FIRST AMENDMENT TO
THE CITY OF ALEXANDRIA PENSION PLAN
FOR FIREFIGHTERS AND POLICE OFFICERS**

Pursuant to the powers of amendment reserved under Article XII, Section A, Paragraph 1 of the City of Alexandria Pension Plan for Firefighters and Police Officers, as amended and restated effective as of December 31, 2002 (the "Plan"), said Plan shall be and the same is hereby further amended by the City of Alexandria (the "Employer") effective as of July 1, 2002 as follows:

FIRST CHANGE

Paragraphs 3 and 4 of Article VI, Section F are hereby deleted and the following new Paragraphs 3 and 4 inserted in lieu thereof:

- "3. The annual amount of disability benefit payable to a Participant in accordance with Section C, above, will be equal to the greater of 66 2/3% of the Participant's Final Average Earnings or his accrued benefit as determined in Sections A and E of Article IV, reduced by the annual amount of periodic payments payable under the Workmen's Compensation Act of the Commonwealth of Virginia. Such reduction shall be applied on a monthly basis in an amount equal to 1/12 of the yearly amount so determined.
4. The annual amount of disability benefit payable to a Participant in accordance with Section D, above, will be equal to the greater of 50% of the Participant's Final Average Earnings or his accrued benefit as determined in Sections A and E of Article IV."

SECOND CHANGE

Paragraph 5 of Article VI, Section F, is hereby deleted in its entirety.

THIRD CHANGE

Section G of Article VI is hereby deleted and the following new Section G inserted in lieu thereof:

Section G: Gainful Employment

1. Effective For Disability Retirement Dates On or After May 24, 1983.

Notwithstanding any other provision of this Plan, any Participant receiving benefits or eligible to receive benefits under this Plan as a result of a disability shall be required to accept employment in any position offered by an employer for which the Participant is qualified or for which the City is willing to assume the costs for the retraining and rehabilitation necessary to enable the Participant to qualify, if the City, in its sole judgment, determines that such employment is appropriate under the circumstances and if the locus of employment is suitable to the Participant's residence.

The provisions of the preceding paragraph shall be subject to the following conditions:

- (a) Prior to any action to provide such alternative employment,
 - (i) the Personnel Department shall present a detailed job description to an independent physician selected by the City (who shall be the treating physician if the disability was covered by the Workmen's Compensation Act) for review and a determination that the Participant is medically able to undertake such employment;
 - (ii) the Personnel Department shall notify the Participant of the particulars of the alternative employment (including the job location and a copy of the job description) and a copy of the physician's determination that the Participant is able to undertake the offered employment;
 - (iii) if the Participant believes he has just cause to refuse to accept such alternate employment, he shall notify the Personnel Department in writing of such reason or reasons for refusal, no later than ten (10) days from receipt of the notification required by the preceding subparagraph;
 - (iv) should the Personnel Director, after reviewing the Participant's written statement, still believe the alternative employment is appropriate and suitable, he shall respond in writing to the Participant, stating the reasons supporting the determination of appropriateness and suitability, particularly responding to the Participant's written statement of reasons;
 - (v) should the Participant continue to refuse to accept the alternate employment, the issue shall be determined in accordance with the procedures of paragraph (b)(i) or (ii).

- (b) (i) In the event the Participant who refuses employment is, in addition, entitled to receive benefits under the Workmen's Compensation Act, the decision as to whether his refusal is justifiable shall be presented to the Industrial Commission of Virginia for determination under the provisions of Section 65.1-63, Code of Virginia, and the decision of the Industrial Commission shall also be binding on the question of termination of disability retirement benefits, as set forth in Article VI, Section H, Paragraphs 2(e) and 3(d). If the Industrial Commission should fail or refuse to act on this question, then the determination shall be made pursuant to sub-paragraph (ii) below.
- (ii) If a Participant entitled to disability benefits under this Plan is not entitled to receive benefits under the Workmen's Compensation Act of the Commonwealth of Virginia, the decision as to whether his refusal of alternative employment is justifiable shall be presented to the City Attorney who shall act as an impartial arbitrator, based upon the entire record, under the standards utilized by the Industrial Commission under the provisions of Section 65.1-63, Code of Virginia. The City Attorney shall issue a written opinion specifying his reasoning and precedential support, if any, for his decision. The City Attorney may request either the Participant or the Personnel Director, or both, to present additional information prior to rendering his decision.

FOURTH CHANGE

Subsection (c) of Article VI, Section H, Paragraph 3 is hereby deleted in its entirety and former Subsections (d) and (e) shall be renumbered as Subsections (c) and (d).

The foregoing changes shall only apply to disability benefits paid on or after July 1, 2002.

The City of Alexandria Pension Plan for Firefighters and Police Officers, as amended and restated effective as of December 31, 2002, and as amended by the foregoing changes is hereby ratified and confirmed in all respects.

IN WITNESS WHEREOF, the Employer has caused this First Amendment to be executed on this _____ day of _____, 2003.

THE CITY OF ALEXANDRIA

By: _____
Philip Sunderland, City Manager

RESOLUTION NO. 2070

WHEREAS, the City of Alexandria maintains the City of Alexandria Pension Plan For Firefighters and Police Officers (the "Plan"); and

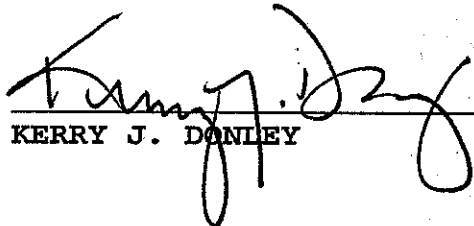
WHEREAS, the City of Alexandria desires to incorporate an amendment to the Plan as set forth in the "First Amendment to the City of Alexandria Pension Plan for Firefighters and Police Officers" (the "Plan Amendment") attached hereto; and

WHEREAS, the Plan Amendment is intended to remove the income offset from any disability payment made after July 1, 2002.

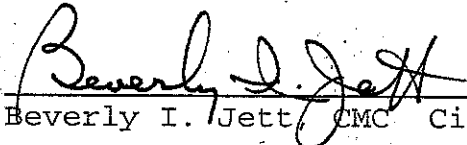
NOW, THEREFORE, BE IT RESOLVED, that the Alexandria City Council does hereby recognize, adopt, and approve the Plan Amendment attached hereto and incorporated fully herein by reference; and

BE IT FURTHER RESOLVED, that this Resolution shall be effective immediately; provided, however, that the amendment hereby approved shall be effective as stated in the Plan Amendment.

ADOPTED: May 13, 2003


KERRY J. DONLEY MAYOR

ATTEST:


Beverly I. Jett, CMC City Clerk

**FIRST AMENDMENT TO
THE CITY OF ALEXANDRIA PENSION PLAN
FOR FIREFIGHTERS AND POLICE OFFICERS**

Pursuant to the powers of amendment reserved under Article XII, Section A, Paragraph 1 of the City of Alexandria Pension Plan for Firefighters and Police Officers, as amended and restated effective as of December 31, 2002 (the "Plan"), said Plan shall be and the same is hereby further amended by the City of Alexandria (the "Employer") effective as of July 1, 2002 as follows:

FIRST CHANGE

Paragraphs 3 and 4 of Article VI, Section F are hereby deleted and the following new Paragraphs 3 and 4 inserted in lieu thereof:

- "3. The annual amount of disability benefit payable to a Participant in accordance with Section C, above, will be equal to the greater of 66 2/3% of the Participant's Final Average Earnings or his accrued benefit as determined in Sections A and E of Article IV, reduced by the annual amount of periodic payments payable under the Workmen's Compensation Act of the Commonwealth of Virginia. Such reduction shall be applied on a monthly basis in an amount equal to 1/12 of the yearly amount so determined.
4. The annual amount of disability benefit payable to a Participant in accordance with Section D, above, will be equal to the greater of 50% of the Participant's Final Average Earnings or his accrued benefit as determined in Sections A and E of Article IV."

SECOND CHANGE

Paragraph 5 of Article VI, Section F, is hereby deleted in its entirety.

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The provisions of the preceding paragraph shall be subject to the following conditions:

- (a) Prior to any action to provide such alternative employment,
 - (i) the Personnel Department shall present a detailed job description to an independent physician selected by the City (who shall be the treating physician if the disability was covered by the Workmen's Compensation Act) for review and a determination that the Participant is medically able to undertake such employment;
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- (ii) If a Participant entitled to disability benefits under this Plan is not entitled to receive benefits under the Workmen's Compensation Act of the Commonwealth of Virginia, the decision as to whether his refusal of alternative employment is justifiable shall be presented to the City Attorney who shall act as an impartial arbitrator, based upon the entire record, under the standards utilized by the Industrial Commission under the provisions of Section 65.1-63, Code of Virginia. The City Attorney shall issue a written opinion specifying his reasoning and precedential support, if any, for his decision. The City Attorney may request either the Participant or the Personnel Director, or both, to present additional information prior to rendering his decision.

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The City of Alexandria Pension Plan for Firefighters and Police Officers, as amended and restated effective as of December 31, 2002, and as amended by the foregoing changes is hereby ratified and confirmed in all respects.

IN WITNESS WHEREOF, the Employer has caused this First Amendment to be executed on this _____ day of _____, 2003.

THE CITY OF ALEXANDRIA

By: _____
Philip Sunderland, City Manager